

JOHN PAUL PRATT

IBLA 76-319

Decided March 1, 1976

Appeal from decision of Utah State Office, Bureau of Land Management, rejecting oil and gas lease offer U 30679.

Affirmed.

1. Oil and Gas Leases: Applications: Drawings -- Oil and Gas Leases: Noncompetitive Leases -- Oil and Gas Leases: Rentals

An offeror is properly disqualified under 43 CFR 3112.4-1 from receiving a noncompetitive oil and gas lease on an offer drawn with the first priority at a simultaneous drawing when he fails to pay the first year's rental within 15 days (or the first business day thereafter) of receipt of the notice that such payment is due.

2. Applications and Entries: Generally -- Applications and Entries: Filing -- Oil and Gas Leases: Applications: Drawings -- Oil and Gas Leases: Rentals

Where an offer is drawn with first priority in a simultaneous drawing, and the offeror fails to pay the first year's rental timely, his failure to do so cannot be excused because of the asserted delay in the Postal Service.

APPEARANCES: John Paul Pratt, pro se.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

In the drawing of simultaneously filed oil and gas lease offers for Parcel U97 conducted by the Utah State Office in July 1975, the first drawn offer was not acceptable. The next drawn offer was filed by John Paul Pratt, who was notified that his rental payment for the lease must be received in the State Office within 15 days from receipt of the notice. The notice specified that if the rental is not paid within the time allowed, the offeror will be automatically disqualified to receive the lease. The return receipt card showed that the notice was received on September 29, 1975, and therefore, payment was due on or before October 14, 1975. On October 16, 1975, the State Office informed appellant by a Notice of Return of Remittance that his payment had not been received until October 15, 1975.

On appeal Pratt contends that he mailed his check in what should have been enough time for it to reach the Utah State Office. He claims that the payment was delayed by the Postal Service, and that consideration should be given to the fact that payment was late due to circumstances beyond his control.

[1] The Mineral Leasing Act specifically provides that lands to be leased noncompetitively must be leased to the first qualified person making the application. 30 U.S.C. § 226(c) (1970). 43 CFR 3112.4-1 states that "[r]ental must be received * * * within fifteen (15) days from the date of receipt of notice * * *" and failure to file the rental payment on time results in disqualification of the offeror. Duncan Miller, 17 IBLA 267 (1974). This regulation makes disqualification under such circumstances automatic and the offer having the next highest priority is immediately put under consideration. 43 CFR 3112.4-1. The rights of a third party are therefore involved because the next drawn offer in acceptable form earns priority as of the date and time of the simultaneous filing and that offeror is first qualified as a matter of law to receive the lease. See 43 CFR 3112.2-1(a)(3); 43 CFR 3112.4-1; McKay v. Wahlenmaier, 226 F.2d 35 (D.C. Cir. 1955); Ballard E. Spencer Trust, Inc., 18 IBLA 25 (1974); Duncan Miller, *supra*.

[2] In Mar-Win Development Co., 20 IBLA 383 (1975), a case bearing marked semblance to the present one, the Board held that an offeror who fails to make timely payment in such circumstances cannot be excused because of asserted delay by the Postal Service. The disqualification of appellant's offer for failure to submit

the rental payment within the prescribed time is mandatory. Mar-Win Development Co., supra; Robert D. Nininger, 16 IBLA 200 (1974), aff'd Nininger v. Morton, Civ. No. 74-1246 (D.D.C., March 25, 1975).

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Douglas E. Henriques
Administrative Judge

We concur:

Edward W. Stuebing
Administrative Judge

Anne Poindexter Lewis
Administrative Judge

